Filed 5/22/19 Rand Resources, LLC v. City of Carson CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RAND RESOURCES, LLC et al., Plaintiffs and Appellants, v. CITY OF CARSON et al., Defendants and Respondents.	B264493 (Los Angeles County Super. Ct. No. BC564093)

APPEAL from an order of the Superior Court of Los Angeles County. Michael L. Stern, Judge. Reversed and remanded with directions.

Huang Ybarra Gelberg & May, Joseph J. Ybarra, Aaron M. May and Kevin H. Scott for Plaintiffs and Appellants.

Aleshire & Wynder, Sunny K. Soltani, Anthony R. Taylor and Christina M. Burrows for Defendants and Respondents City of Carson and James Dear.

Tamborelli Law Group and John V. Tamborelli for Defendants and Respondents Leonard Bloom and U.S. Capital LLC.

We consider this appeal again on remand from our Supreme Court. In *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610 (*Rand Resources*), the court affirmed in part and reversed in part our prior opinion (*Rand Resources, LLC v. City of Carson* (2016) 247 Cal.App.4th 1080, review granted Sept. 21, 2016, S235735 (*Rand I*)), which held that the trial court erred in granting the motions to strike filed by defendants and respondents City of Carson (the City), James Dear, Leonard Bloom, and U.S. Capital LLC (U.S. Capital) under the anti-SLAPP law (Code Civ. Proc., § 425.16).[1] The motions argued that various claims asserted by plaintiffs and appellants Rand Resources, LLC (Rand Resources) and Carson El Camino, LLC (El Camino) (collectively, Plaintiffs) arise from conduct protected under section 425.16, subdivision (e). The Supreme Court agreed with this court that most of those claims do not arise from protected conduct. However, the court held that only two of those claims—asserted against Bloom and U.S. Capital only (collectively, the Bloom Defendants) for tortious interference with contract and interference with prospective economic advantage—do arise from protected conduct. (*Rand Resources,* at pp. 630–631.) The court remanded for a "determination of whether plaintiffs have established a probability of prevailing on their intentional interference claims" under the second step of the anti-SLAPP procedure. (*Id.* at p. 631.)

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[1] Subsequent undesignated statutory references are to the Code of Civil Procedure.

We conclude that Plaintiffs have done so. Accordingly, we reverse and remand for further proceedings in the trial court on all of Plaintiffs' claims.

BACKGROUND

The relevant factual and procedural background is described in *Rand Resources* and in this court's prior opinion. (See *Rand Resources, supra,* 6 Cal.5th at pp. 616–619; *Rand I, supra,* 247 Cal.App.4th at pp. 1084–1089, review granted.) We therefore only briefly summarize the claims at issue and the relevant portions of the anti-SLAPP law.

1. Plaintiffs' Intentional Interference Claims

Plaintiffs claim that the Bloom Defendants interfered with both their existing and prospective contractual relationships with the City. In their fifth cause of action, Plaintiffs allege that the Bloom Defendants intentionally interfered with Rand Resources' Exclusive Agency Agreement (EAA) with the City, which gave Rand Resources (and El Camino as Rand's assignee) the exclusive right to negotiate on the City's behalf to attempt to bring a National Football League (NFL) franchise to the City. The EAA was in force from September 4, 2012, to September 4, 2014, and contained a provision permitting two extensions of one year each, upon mutual written consent and a report of efforts that were "reasonably determined by the City to be consistent with the requirements" of the agreement.

Plaintiffs allege that the Bloom Defendants interfered with Plaintiffs' exclusive agency arrangement in the EAA by enlisting the support of City officials for their own activities, "purporting to be agents of the City with respect to bringing an NFL franchise to Carson." Plaintiffs claim that Bloom and others in his company, U.S. Capital, met secretly with City officials, including the mayor

at the time (defendant James Dear), concerning "bringing the NFL to Carson" while the EAA was in force. They allege that Bloom and Dear met with NFL executives and representatives of NFL teams and worked on raising money to bring an NFL team to the City, causing the City to breach the EAA.

In their sixth cause of action, Plaintiffs allege that the Bloom Defendants interfered with Plaintiffs' reasonable expectation that the City would extend the EAA. Plaintiffs allege that City representatives had told Richard Rand (Rand) that "so long as Plaintiffs showed reasonable progress with respect to bringing an NFL franchise to Carson, the EAA would be extended." However, the City decided not to extend the EAA in 2014, allegedly telling Rand that the City did not need him anymore.

2. The Anti-SLAPP Procedure

Analysis of an anti-SLAPP motion is a two-step process. In the first step, the "moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*).) At this stage, the defendant must make a "threshold showing" that the challenged claims arise from protected activity, which is defined in section 425.16, subdivision (e). (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.)

Second, if the defendant makes such a showing, the "burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral*, *supra*, 1 Cal.5th at p. 396.) Without resolving evidentiary conflicts, the court determines "whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment." (*Ibid.*) The

plaintiff's showing must be based upon admissible evidence. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) Thus, the second step of the anti-SLAPP analysis is a "summary-judgment-like procedure at an early stage of the litigation." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) In this step, a plaintiff "need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) A plaintiff prevails in the second step by demonstrating that " 'the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821, quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.)

Here, our Supreme Court has already determined which of Plaintiffs' claims arise from protected conduct under the first step of the anti-SLAPP analysis. Only Plaintiffs' claims for intentional interference against the Bloom Defendants have cleared this hurdle. Thus, we need only consider whether Plaintiffs have provided sufficient evidence to show a likelihood of success on those claims in the second step of the anti-SLAPP procedure. In doing so, we employ a de novo standard of review. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)

DISCUSSION

1. Plaintiffs Provided Sufficient Evidence That the Bloom Defendants Intentionally Interfered with the EAA

In evaluating the strength of Plaintiffs' intentional interference claims, we do not have the benefit of a trial court ruling addressing the admissible evidence supporting those claims. The trial court adopted its tentative decision as its final ruling. However, in its tentative decision, the trial court stated only that Plaintiffs "failed to meet their burden of presenting competent admissible evidence substantiating the probability that they will prevail at trial." The statement referred to the court's blanket ruling sustaining all of the Bloom Defendants' objections to Plaintiffs' evidence. The trial court later changed that ruling, providing instead an order addressing each of the objections, sustaining some and overruling others. Thus, the trial court's final order did not analyze the evidence that the court ultimately ruled was admissible. In our analysis, we consider only the evidence that was not subject to an objection in the trial court or that was subject to an objection that the trial court overruled.

The elements of the tort of "intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.) While the evidence Plaintiffs were able to provide prior to conducting discovery was not

overwhelming, it is sufficient to support a prima facie showing on each of these elements.[2]

Plaintiffs submitted evidence of a valid contract in the form of the EAA. The EAA contains an exclusivity provision stating that, during the term of the agreement, "City's appointment of Agent [Rand Resources] as its agent for the Authorized Agency [which included coordinating and negotiating with the NFL for a football stadium in the City] shall be exclusive such that (i) Agent shall be the sole person designated as the agent of City for the Authorized Agency during the Term, and (ii) City shall not engage, authorize or permit any other person or entity whomsoever to represent City, to negotiate on its behalf, or to otherwise act for City in any capacity with respect to any subject matter falling within the Authorized Agency."

Plaintiffs provided evidence that City officials communicated with Bloom and other U.S. Capital personnel during the time when the EAA was in force, including on topics that could have related to an NFL stadium.[3] For example, an e-mail to a City councilman on May 13, 2014, stated that Bloom "would like to try to meet with you this week regarding the stadium." A November 5, 2013 e-mail from a U.S. Capital employee forwarded an agenda to Mayor Dear's executive assistant concerning an upcoming meeting which the mayor,

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[2] In light of our disposition, we need not consider Plaintiffs' argument that the trial court erred in denying their request for discovery prior to responding to the anti-SLAPP motions.

[3] Evidence identified Bloom as the managing director and chief executive officer of U.S. Capital.

other City representatives, and Bloom were to attend. The meeting concerned a "Landfill Site," and one of the agenda items referred to a proposed "Sports, Entertainment & Performing Arts Complex." Other communications between Bloom (or his company) and the City from September 2013 to May 2014 concerned property acquisitions and contacts with various wealthy persons and other potential investors.

While these communications did not expressly refer to property acquisition or investment for the purpose of an *NFL* stadium, a fact finder could reasonably make that inference based upon other evidence. Plaintiffs served a subpoena on Jeff Klein, a person they identified only as a "third party." In response to the subpoena, Klein produced e-mail exchanges between him and Bloom. One e-mail from Bloom to Klein, dated July 16, 2013, stated in the "Subject" line "Carson NFL." The e-mail concerned information relating to a "project" involving the "Hyundai Group," and stated that "All meetings with the City, the County, the Carson City Attorney and the Los Angeles County Attorney are under strict CONFIDENTIALITY and no outsiders are to be involved. The meetings with the Carson City Attorney and the Los Angeles County Attorney have advanced to final numbers for the acquisition. NO ONE IS TO KNOW THIS!" A fact finder could reasonably infer from this e-mail that Bloom was working with the City and third parties concerning an "acquisition" relating to bringing the NFL to Carson, and that he wanted to keep this information secret.

Plaintiffs also provided evidence suggesting that Dear lied to Rand about his communications with Bloom. Rand provided a declaration stating that he asked Dear in "late 2013" about "rumors I had been hearing regarding Mr. Bloom's involvement

with the City and the NFL." Dear told Rand that "he did not know Mr. Bloom and was not aware of anything that Mr. Bloom was doing with the City." Then in March 2014, while on a trip to China with Dear and others for presentations to potential investors about the NFL project, Rand asked Dear again about Bloom. Rather than denying any involvement with Bloom as he had done previously, Dear told Rand that "Mr. Bloom was unwilling to meet" with Rand.

Rand provided other testimony explaining that he raised the issue of interference with Bloom and received no response. Rand instructed his counsel in August 2014 to "send a cease and desist letter to Mr. Bloom," which he did. The letter stated that "[i]t has come to the attention of Rand Resources that you have been conducting discussions with City officials with respect to negotiations to bring the NFL to the City." The letter advised Bloom that "such discussions are contrary to the exclusive rights of Rand Resources under the EAA and could lead to liability for tortious interference with the contractual rights of Rand Resources under the EAA, among other things." Rand never received a response to the letter.

Finally, Plaintiffs provided evidence of injury. Rand testified that, pursuant to the EAA, Plaintiffs spent time and resources on retaining advisors, meeting with potential investors and NFL representatives, designing promotional materials, preparing site plans, and work necessary for environmental approval.

This evidence, if credited, was sufficient to show:

(1) *A valid contract*

The Bloom Defendants do not claim that the EAA was invalid. (See *Rand Resources, supra,* 6 Cal.5th at p. 627, fn. 5.)

(2) *Bloom's knowledge of the contract*

Bloom's knowledge of the EAA can reasonably be inferred from his insistence on secrecy in communications between third parties and the City. Moreover, in light of Bloom's own insistence on secrecy and Bloom's regular communications with the City, Dear's statement to Rand denying a relationship with Bloom could also support an inference that Dear and Bloom shared a common purpose of keeping information about Bloom's involvement from Rand. One obvious reason for such secrecy was to avoid possible liability for a breach of the exclusivity agreement in the EAA. In addition, although it occurred very late in the life of the EAA, Bloom's failure to respond to Rand's accusations of tortious interference also provides some support for the conclusion that Bloom was already aware of the EAA.

(3) *Intentional acts designed to induce a breach*

Bloom's communications with the City furthering his role in promoting the NFL project satisfy this element.

(4) *Actual breach*

Plaintiffs' evidence shows that Bloom dealt with at least one third party on behalf of the City for the project.

(5) *Resulting damage*

Rand testified that Plaintiffs spent time and money in reliance on the exclusive arrangement in the EAA.

Thus, Plaintiffs provided evidence sufficient to support a prima facie case with respect to each element of their tortious interference claim.

2. Plaintiffs Provided Sufficient Evidence That the Bloom Defendants Interfered with Their Prospective Economic Advantage

The elements of the tort of intentional interference with prospective economic advantage are similar to the elements of intentional interference with contract, with the additional requirement to show that the defendant engaged in conduct that is wrongful apart from the interference itself. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply*).) An act is independently wrongful if it is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id.* at p. 1159.)

Plaintiffs' theory of interference is that the Bloom Defendants forged a relationship with the City that persuaded the City not to extend the EAA. The theory includes the claim that the Bloom Defendants' conduct in forging that relationship itself amounted to the separate tort of intentional interference with the existing EAA. As discussed above, the evidence is sufficient to support a prima facie case for that tort. The Bloom Defendants' alleged intentional interference with an *existing* contract is therefore sufficient to meet the element of tortious conduct that is independently wrongful under a "determinable" common law standard. (*Korea Supply, supra,* 29 Cal.4th at p. 1153.)[4]

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[4] In *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, the court concluded that the defendants did not engage in independently wrongful conduct by engaging in discussions about a potential property development with employees of a city that had an

There is also evidence that, if credited, shows a reasonable probability that the City would have extended the EAA absent the Bloom Defendants' alleged interference. Rand testified that the City told him the EAA would be extended if Rand Resources had made reasonable progress. The EAA itself contains language supporting this understanding. The EAA states that, upon receipt of a report detailing Rand Resources' efforts, "[t]o the extent that such efforts are reasonably determined by the City to be consistent with the requirements of this Agreement, the City shall grant such extension request."

The evidence is therefore sufficient to support Plaintiff's claim for interference with prospective economic advantage at this stage of the case.

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exclusive negotiating agreement with the plaintiff (Tuchscher) concerning that development. Tuchscher alleged that the defendant's discussions interfered with its ability to reach a development agreement with the city and to obtain an extension of the negotiating deadline. (*Id.* at p. 1240.) The court concluded that the defendants' alleged conduct in dealing with the city was not independently wrongful because the defendants "were not parties to the negotiating agreement and thus they were not bound by any contractual obligation or duty to refrain from taking steps . . . to push their own development ideas." (*Id.* at p. 1243.) However, in that case, unlike here, the evidence was insufficient to support a claim that the defendants tortiously interfered with Tuchscher's existing exclusive negotiating agreement. Here, the evidence of the Bloom Defendants' tortious interference with the *existing* EAA is sufficient to show conduct that was wrongful for reasons independent of interference with the City's decision not to extend the contract.

3. The Bloom Defendants' Arguments Do Not Identify Any Viable Defense to Plaintiffs' Interference Claims

In their original brief in this court, the Bloom Defendants argued that their conduct was privileged under Civil Code section 47, subdivision (b). Our Supreme Court's opinion in *Rand Resources* forecloses that argument. (*Rand Resources, supra,* 6 Cal.5th 610.)

In *Rand Resources,* the court held that "[o]nly communications made in connection with the renewal of the EAA—what the City Council actually considered—constitute 'written or oral statement[s] or writing[s] made in connection with an issue under consideration or review' by the City Council" under section 425.16, subdivision (e)(2). (*Rand Resources, supra,* 6 Cal.5th at p. 623.) Statements made before proceedings concerning the renewal decision were ongoing (or at least before such proceedings were "immediately pending") could not have been in connection with those proceedings. (*Id.* at pp. 626–627.) The evidence discussed above concerning the Bloom Defendants' communications with the City and third parties before Rand Resources submitted its extension request in July 2014 fall in that category.[5]

Civil Code section 47, subdivision (b) establishes a privilege for statements made in legislative or judicial proceedings or "any

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[5] Rand's cease and desist letter to Bloom was sent during the time that the renewal decision was pending, but it was not sent to the City and it did not address the renewal. Rather, it accused Bloom of tortious interference with the existing agreement.

other proceeding authorized by law." The scope of that privilege and the scope of protected petitioning conduct under Code of Civil Procedure section 425.16, subdivision (e)(1) and (2) are not necessarily the same, but they are closely related. (See *Flatley v. Mauro* (2006) 39 Cal.4th 299, 322–323 [although the litigation privilege in Civil Code section 47, subdivision (b) and the anti-SLAPP statute serve different purposes, the litigation privilege is an aid to construing the scope of Code of Civil Procedure section 425.16, subdivision (e)(1) and (2)]; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1121 [construing the scope of Code of Civil Procedure section 425.16, subdivision (e)(1) and (2) in light of Civil Code section 47, subdivision (b)].) The court's holding in *Rand Resources* that statements unconnected to the extension of the EAA did not arise from protected petitioning conduct also means that such statements are not privileged. (See also *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 284 [pre-proceeding communications must be made in anticipation of or designed to prompt official proceedings to be privileged], citing *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 368.)

The Bloom Defendants also argued that Plaintiffs do not have actionable claims because Rand Resources' corporate status was suspended from September 13, 2012 (nine days *after* it entered into the EAA) until March 19, 2015 (about a month after it filed its First Amended Complaint). The argument is meritless. Rand Resources was not suspended at the time it entered into the EAA with the City. The EAA was therefore not voidable. (See Rev. & Tax. Code, § 23304.1, subd. (a).) Moreover, even if the EAA were voidable, there is no judgment declaring it void. (See Rev. & Tax. Code, § 23304.5.) And once a delinquent

corporation has satisfied its obligations, "its powers are restored, thus reviving its capacity to sue and defend." (*Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1486.)

The Bloom Defendants also claim that Rand Resources could not assign its interest in the EAA to El Camino while Rand Resources was suspended, but they cite no authority supporting that claim. Even if the assignment were voidable, there is no evidence of any action declaring it void. And, even if El Camino lacked standing to sue, the invalidity of an assignment would not affect the ability of Rand Resources to proceed with the action.

DISPOSITION

The trial court's May 7, 2015 order granting the anti-SLAPP motions is reversed. Any and all orders by the trial court awarding attorney fees to the defendants, or any of them, are also reversed. The May 26, 2015 "partial judgment" is vacated. The case is remanded for further proceedings on Plaintiffs' claims. Plaintiffs are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.*

We concur:

CHANEY, Acting P .J.

JOHNSON, J.

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* Presiding Justice of the Court of Appeal, Second Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.